

REMARKS

This Amendment is responsive to the Office Action identified above, and is responsive in any other manner indicated below.

SUPPLEMENTAL REISSUE OATH/DECLARATION

The reissue oath/declaration has been objected to based upon the Office Action concern(s) as set forth within the Office Action. MPEP 1444's section II indicates that Applicant is able to defer the filing of a Supplemental Reissue Oath/Declaration until the end of prosecution). Applicant is **presently in the process of having the inventor(s) execute a Reissue Oath/Declaration** covering all presently-existing reissue errors and/or all papers submitted to date (including this paper), and such executed Reissue Oath/Declaration **will be submitted shortly**. That is, Applicant purposefully is having a Reissue Oath/Declaration executed subsequent to submission of this present Amendment, so that such Reissue Oath/Declaration can be comprehensive to cover amendments submitted (i.e., errors corrected) with this present Amendment, and **obviate any need for another supplemental Reissue Oath/Declaration**. If the Reissue Oath/Declaration becomes the only issue barring allowance of the application, the Examiner is asked to please refrain from issuing another action, and instead is invited to call the undersigned at the local Washington, D.C. telephone number of 703-312-6600 to provoke accelerated filing of such document to move the application to allowance.

WRITTEN CONSENT OF ASSIGNEE

The Written Consent Of Assignee has been objected to based upon the Office Action concern(s) as set forth within the Office Action. Traversal is appropriate. However, to travel a path of least resistance to grant of a patent, Applicant is **presently in the process of having the Assignee execute another Written Consent of Assignee (at the same time the Reissue Oath/Declaration mentioned above is being executed)** to cover amendments submitted (i.e., errors corrected) with this present Amendment, and **obviate any need for another supplemental Written Consent Of Assignee**. If the Written Consent Of Assignee becomes the only issue barring allowance of the application, **the Examiner is asked to please refrain from issuing another action, and instead is invited to call the undersigned at the local Washington, D.C. telephone number of 703-312-6600 to provoke accelerated filing of the of such document** to move the application to allowance.

PENDING CLAIMS

Claims 1-14 and 37-62 were pending, under consideration and subjected to examination in the Office Action. Appropriate claims have been amended, canceled and/or added (without prejudice or disclaimer) in order to adjust a clarity and/or focus of Applicant's claimed invention. That is, such changes are unrelated to any prior art or scope adjustment and are simply refocused claims in which Applicant is present interested. At entry of this paper, Claims 37-62 will be pending for further consideration and examination in the application.

REISSUE BROADENING – TWO-YEAR BAR

The section numbered “3” beginning on “Page 2” of at least the 14 May 2009 Office Action rejects claims 37-62 “...as being broadened in a reissue application filed outside the two year period.” **Strong traversal is appropriate.**

More particularly, a portion of **MPEP Section 1412.03**, subsection “**IV WHEN A BROADENED CLAIM CAN BE PRESENTED**”, page 1400-29, Rev. 7, July 2008, is reproduced and highlighted herewith, as follows:

SECTION OF PATENTS

1412.03

ed to Thus, a broadened claim may be presented in a reissue
ich it application after the two years, even though the
aim 1 broadened claim presented after the two years is dif-
ferent than the broadened claim presented within the
two years. Finally, if intent to broaden is indicated in a
parent reissue application within the two years, a
broadened claim can be presented in a continuing
(continuation or divisional) reissue application after
the two year period. In any other situation, a broad-
ened claim cannot be presented, and the examiner
should check carefully for the improper presentation
of broadened claims.

ADD-
IS

ry of
there
tent)
of the
1546

A reissue application filed on the 2-year anniver-

Given that Applicant's parent (original) reissue application indicated an intent to, and did in fact, broaden within two years from the grant of the original patent, and given the fact that **Applicant claims 120 priority** from such parent (original) reissue application, it is respectfully submitted that **broadening is permitted** within the present application (whether it is a **CONTINUATION** application or **DIVISIONAL** application). Accordingly, reconsideration and withdrawal of any

rejection of Applicant's claim(s) based upon the two-year (2-year) broadening bar, are respectfully requested.

REJECTION UNDER '112, 2ND PAR. OBIATED VIA CLAIM CANCELLATION

Claims 1-14 have been rejected under 35 USC '112, second paragraph, as being indefinite for the concerns listed on pages 3 and 4 of the Office Action. Care has been taken to now insure that patented claims 1-14 exist only within the parent Reissue application, i.e., any claim 1-14 have been removed from this related divisional Reissue application, and accordingly, any confusion or conflict with claims 1-14 of related parent Reissue applications has been obviated. As the foregoing is believed to have addressed all '112 second paragraph concerns, and withdrawal of the '112 second paragraph rejection are respectfully requested.

DOUBLE PATENTING REJECTION - TRAVERSED/NOT SUPPORTED

The non-statutory double patenting rejection is respectfully traversed because such rejection does not provide the factual analysis required for such rejections under U.S. patent law, i.e., the Examiner has not satisfied his/her initial burden to adequately support the rejection. More particularly, MPEP 804 providing guidance for examining states that

"Since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 USC 103(a) rejection, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 US 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 USC 103 are employed when making an obviousness-type double patenting analysis. These factual inquiries are summarized as follows:

(A) Determine the scope and content of a patent claim and the prior art relative to a claim in the application at issue;

- (B) Determine the differences between the scope and content of the patent claim and the prior art as determined in (A) and the claim in the application at issue;
- (C) Determine the level of ordinary skill in the pertinent art; and
- (D) Evaluate any objective indicia of non-obviousness.

...

Any obviousness-type double patenting rejection should make clear:

- (A) The differences between the invention defined by the conflicting claims - a claim in the patent compared to a claim in the application; and

(B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent."

The rejection does not make clear the differences, or the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent. That is, the Office Action comments have supplied only a bare conclusion, with no accompanying discussions of differences or obviousness reasons. Accordingly, Applicant respectfully submits that the above analysis should be provided in order for the Examiner to satisfy his/her initial burden to support the rejection, or the rejection should be withdrawn.

Despite the above traversal, it is respectfully submitted that such rejection has been rendered **obviated by the cancellation of allegedly double-patenting claims from the related reissue application(s).** The above statements, or any present cancellation of disputed claims (without prejudice or disclaimer), should not be taken as an indication or admission that the objection or rejection was valid, or as a disclaimer of any scope or subject matter, but is merely use of a procedural approach to move toward a patent as quickly as possible.

EXAMINER INVITED TO TELEPHONE

The Examiner is herein invited to telephone the undersigned attorneys at the local Washington, D.C. area telephone number of 703/312-6600 for discussing any Examiner's Amendments or other suggested actions for accelerating prosecution and moving the present application to allowance.

RESERVATION OF RIGHTS

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer. That is, any above statements, or any present amendment or cancellation of claims (all made without prejudice or disclaimer), should not be taken as an indication or admission that any objection/rejection was valid, or as a disclaimer of any scope or subject matter. Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, i.e., Applicant continues (indefinitely) to maintain no intention or desire to dedicate or surrender any limitations/features of subject matter of the present application to the public.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that the application is now in condition for allowance.

To the extent necessary, Applicant petitions for an extension of time under 37

CFR '1.136. Authorization is herein given to charge any shortage in the fees, including extension of time fees and excess claim fees, to Deposit Account No. 01-2135 (Case No. 1374.32049RV2) and please credit any excess fees to such deposit account.

Respectfully submitted,

ANTONELLI, TERRY, STOUT & KRAUS, LLP

/Paul J. Skwierawski/
Paul J. Skwierawski
Registration No. 32,173

PJS/slk
(703) 312-6600